

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCTOBER
20, 1967

-----x
LOUIS TEPLITSKY,

Plaintiff,

-against-

BUREAU OF COMPENSATION
U. S. DEPARTMENT OF LABOR

-and-

UNITED STATES OF AMERICA,

Defendants.

ANSWER TO AMENDED
COMPLAINT

WITH COUNTERCLAIM

67 Civil 1019

-----x
The defendants answer the amended pro se complaint
herein on information and belief as follows:

AS TO THE FIRST CAUSE OF ACTION

41. In light of plaintiff's psychiatric history, and on the basis of its own examination, defendant Bureau of Employees' Compensation concluded that the injury of December 11, 1963 had aggravated or accelerated the incapacitating effect of plaintiff's psychiatric disorder. The Bureau therefore found plaintiff to be totally disabled by virtue of deterioration in the preexisting paranoid-schizophrenic state. The Bureau awarded plaintiff permanent total disability benefits of \$209.99 per month effective November 10, 1964.

43. Plaintiff is entitled to receive benefits from the Veterans Administration or from the Bureau of Employees' Compensation and must make an election between those benefits as required by 5 U.S.C. §8116.

44. Although repeatedly requested to do so, plaintiff has failed and refused to make such an election in writing. Plaintiff has, however, returned and refused to accept total disability benefits from defendant Bureau of Employees' Compensation while continuing to accept total disability

benefits from the Veterans Administration.

WHEREFORE defendant demands

1. Judgment dismissing the complaint;
2. Judgment on its counterclaim pursuant to the Declaratory Judgments Act (28 U.S.C. §§2201-2202),

(a) declaring that plaintiff must, in writing, make an election whether to receive benefits under the Veterans Administration Act or under the Federal Employees Compensation Act; and

(b) directing plaintiff to file an election in writing requesting payment of benefits under either the Veterans Administration Act or the Federal Employees' Compensation Act; or

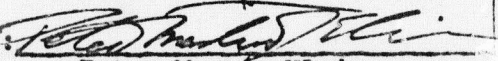
(c) declaring that plaintiff's actions returning and refusing to accept total disability payments from defendant Bureau of Employees' Compensation constitute an election to receive benefits under the Veterans Administration Act only.

3. Such other, further and different relief as to the Court may seem just and proper.

**OCTOBER
20, 1967**

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LOUIS TEPLITSKY v. BUREAU OF COMPENSATION

ENDORSEMENT
67 Civ. 1019

Plaintiff moves for an extension of time in which to make an election between Veterans Administration benefits of \$250.00 per month and Bureau of Employees' Compensation benefits plus the \$107.00 Veterans Administration award for partial disability. Teplitsky v. Bureau of Compensation, 288 F. Supp. 310 (S.D.N.Y.), aff'd, 398 F.2d 820 (2d Cir.), cert. denied, 37 U.S.L. Week 3178 (U.S. Nov. 12, 1968).

The election should have been made within one year of the injury. Extensions beyond that time can be granted only by the Secretary of Labor. 5 U.S.C. § 8116(b).

The motion is denied in all respects.

So ordered.

Dated: New York, N. Y.
December 4, 1968

Alfred Mac Mulder
U. S. D. J.

UNITED STATES DEPARTMENT OF LABOR
WAGE AND LABOR STANDARDS ADMINISTRATION
BUREAU OF EMPLOYEES' COMPENSATION
321 WEST FORTY-FOURTH STREET
NEW YORK, N.Y. 10036

January 10, 1969

FILE NO.
A2-104986
Inj: 12/11/68

Mr. Louis Teplitsky
3181 Rochambeau Ave
Bronx, New York 10467

Dear Mr. Teplitsky:

Your letter of December 11, 1968 addressed to the Secretary of Labor has been forwarded to this office for reply.

There appears to be no basis for granting your request for an extension of time in which to make your election between the benefits of the Veterans Administration and the benefits of the Federal Employee's Compensation Act as required under 5 USC 8116(b).

It is recommended that you make your election in accordance with the law, and should you elect the benefits of the Federal Employee's Compensation Act, prompt steps will be taken to restore you to the compensation rolls in accordance with your wishes.

Yours very truly,
Anthony F. Campo
Anthony F. Campo
Chief, Branch of Claims

